

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

VERITA GILL,)	
)	
Plaintiff,)	
)	No. CV-07-812-HU
v.)	
)	
COMMISSIONER of Social)	
Security,)	FINDINGS & RECOMMENDATION
)	
Defendant.)	
_____)	

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1 - FINDINGS & RECOMMENDATION

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5 HUBEL, Magistrate Judge:

6 Plaintiff Verita Gill brought an action for judicial review of
7 the Commissioner's final decision to deny supplemental security
8 income (SSI). On August 6, 2008, this Court issued a Judgment
9 reversing and remanding for an award of benefits.

10 Plaintiff now seeks attorney's fees pursuant to the Equal
11 Access to Judgment Act, 28 U.S.C. § 2412 (EAJA). Defendant objects
12 to the amount of fees requested. I recommend that the motion for
13 EAJA fees be granted in part and denied in part.

14 EAJA requires an award of attorney's fees to prevailing
15 parties in civil actions against the United States unless the
16 position of the United States was substantially justified. 28
17 U.S.C. § 2412(d)(1)(A). Defendant concedes that plaintiff is the
18 prevailing party and that the government's position was not
19 substantially justified. Deft's Resp. at p. 2. I agree.

20 The sole issue raised in the briefing is the reasonableness of
21 the hours expended and sought by plaintiff's counsel. In support
22 of the motion, plaintiff submits time records showing a total of
23 58.17 hours spent on the case, with 24.25 hours spent by lead
24 counsel Tim Wilborn, and 33.92 hours spent by Georgia attorney
25 Jeffrey Narvil.

26 The court exercises discretion in awarding fees under EAJA.
27 See Rodriguez v. United States, 542 F.3d 704, 709 (9th Cir. 2008)
28

1 (court of appeals reviews district court award of fees under EAJA
2 for abuse of discretion); see also Webb v. Ada County, 195 F.3d
3 524, 526 (9th Cir. 1999) (district court possesses "considerable
4 discretion" in determining the reasonableness of a fee award). The
5 fee award is a combination of the number of hours reasonably
6 worked, multiplied by a reasonable hourly rate. Webb, 195 F.3d at
7 526.

8 Moreover, even absent specific objections by the opposing
9 party, the court has an independent duty to scrutinize a fee
10 request to determine its reasonableness. Gates v. Deukmejian, 987
11 F.2d 1392, 1401 (9th Cir. 1993); see also Poole v. Textron, Inc.,
12 192 F.R.D. 494, 508 (D. Md. 2000) (because the award must be
13 reasonable, it is incumbent on the district court to subject the
14 request to an independent review to "insure that the time expended
15 . . . was not excessive to the task and [to consider] the hourly
16 rate charged in light of fees charged in the legal community for
17 services of like kind and quality.").

18 As Judge Mosman noted in a 2007 opinion, "[t]here is some
19 consensus among the district courts that 20-40 hours is a
20 reasonable amount of time to spend on a social security case that
21 does not present particular difficulty." Harden v. Commissioner,
22 497 F. Supp. 2d 1214, 1215 (D. Or. 2007) (citing cases). Judge
23 Mosman agreed that absent unusual circumstances or complexity,
24 "this range provides an accurate framework for measuring whether
25 the amount of time counsel spent is reasonable." Id. at 1216.

26 While the administrative record in this case was fairly long
27 at approximately 1,000 pages, plaintiff's lead counsel chose to
28 hire a second attorney to work on the briefing, resulting in some

1 duplication of effort. Additionally, while the briefing was of
2 good quality, none of the arguments raised was exceptionally
3 complex or raised a novel legal issue. Rather, the arguments
4 presented were typical of those raised in many social security
5 appeals: problems with vocational evidence, improper rejection of
6 plaintiff's testimony, improper rejection of medical evidence,
7 errors in a substance abuse materiality analysis, a failure to
8 consider GAF scores, and errors in considering medical non-
9 compliance.

10 Accordingly, nothing in this case justifies a total number of
11 hours more than the high end of the range identified by Judge
12 Mosman and other courts. I conclude that 40 hours of time was
13 reasonable.

14 EAJA sets a ceiling of \$125 per hour "unless the court
15 determines that an increase in the cost of living . . . justifies
16 a higher fee." 28 U.S.C. § 2412(d)(2)(A). To adjust for the cost
17 of living, the Ninth Circuit applies the consumer price index for
18 all urban consumers (CPI-U). Jones v. Espy, 10 F.3d 690, 692-93
19 (9th Cir. 1993) (CPI-U for all items, not just legal services,
20 applies). The CPI-U for October 2008 (the most recent month for
21 which information is available) is 217.5 (table available at:
22 <http://www.bls.gov/cpi/cpid0810.pdf>). The adjusted hourly rate is
23 \$174.61. See Ramon-Sepulveda v. INS, 863 F.2d 1458, 1463 n.4 (9th
24 Cir. 1988) (explaining formula as EAJA ceiling (presently
25 \$125/hour), x the CPI-U for current month/CPI-U for month Congress
26 adopted current ceiling. 155.7 is the CPI-U for March 1996, the
27 month Congress adopted the \$125/hour rate).

28 Forty hours multiplied by \$174.61 produces a total EAJA fee

1 award of \$6,984.40.

2 CONCLUSION

3 I recommend that the motion for EAJA fees (#24) be granted in
4 part and denied in part, and that plaintiff's counsel be awarded
5 \$6,984.40 in fees.

6 SCHEDULING ORDER

7 The above Findings and Recommendation will be referred to a
8 United States District Judge for review. Objections, if any, are
9 due December 29, 2008. If no objections are filed, review of the
10 Findings and Recommendation will go under advisement on that date.

11 If objections are filed, a response to the objections is due
12 January 12, 2009, and the review of the Findings and Recommendation
13 will go under advisement on that date.

14 IT IS SO ORDERED.

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16 DATED this 10th day of December, 2008.

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19 /s/ Dennis James Hubel
20 _____
Dennis James Hubel
United States Magistrate Judge
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